IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 951 OF 2005

WITH

CIVIL APPLICATION NO. 1057 OF 2005

Smt. Kusum Shejwadkar ....Appellant

Versus

The Maharashtra Housing and Area Development Authority and Anr. ...Respondents

Mr. H.S. Anand with Ms. Sarita Dande for the Appellant.
Mr. V.B. Sakhare, Additional Government Pleader, for respondent No.1.

CORAM: **DR. D.Y. CHANDRACHUD, J.**
DATE: **DECEMBER 21, 2005**.

P.C.

Admit. Counsel appearing on behalf of the Respondent waives service. By consent, taken up for hearing and final disposal.

2. The Appellant claims to have been in possession of Room No.8, 265/67 Nene Bhavan, Sheth Mahal Building, 4th floor, Girgaum, Mumbai-400 004, since prior to 1974. The building was in a dilapidated condition and, according to the Appellant, a warning notice was issued by the Deputy Chief Executive Officer of the Mumbai Building Repair and Reconstruction Board on 25th February, 1976. According to the Appellant, an agreement was entered into in Form- B under Section 35 (1) of the Mumbai Building Repair

and Reconstruction Board Act, 1969, by which temporary accommodation came to be allotted to the Appellant. The documents recite that the Board had undertaken structural repairs to the building; that the Appellant was being given alternate accommodation and that after the building was repaired, the Appellant would have a right to reoccupy the premises vacated by her. In February, 1976, the Appellant was granted transit accommodation. The grievance of the Appellant is that since 1976 until date, no notice was received to the effect that the repairs of the building were complete and that the Appellant should occupy the original premises. On 27th August, 2001, the Appellant received a notice to vacate the transit accommodation. The Appellant instituted a suit before the City Civil Court in which a Motion for interim relief was taken out. The Motion was dismissed by the Learned Trial Judge with the following observations.

> "No ad-interim relief is granted. The Plaintiff states that the premises are allotted to others. Hence, nothing survives in the Notice of Motion. Hence, rejected."

3. The order passed by the Learned Trial Judge does not, with respect, disclose an application of mind to any of the issues involved in the case. The MHADA has filed an affidavit in these proceedings of the Deputy Engineer, admitting that the Appellant was residing in Room No.8 of the building in question and that the warning notice was issued to her in 1976. It has also been stated that the landlord of the building had called upon the Appellant to vacate the room. In its affidavit in reply, MHADA has stated that

the landlord had instituted a Suit being Suit No. 2783 of 1993 against the Municipal Corporation of Greater Mumbai and MHADA which was decided by the City Civil Court on 28th August, 2000, in which it was held that the suit building was not repaired by MHADA. MHADA has submitted that the landlord is a necessary party to the proceedings.

4. Learned Counsel appearing on behalf of the Appellant has adverted to a communication dated 16th December, 2000 of the Repair Board to the Appellant by which the Appellant was called upon to submit certain documents in aid of the preparation of a Master List. It has been stated that the Appellant has filed an affidavit-cum-indemnity bond. The relief which has been now sought on behalf of the Appellant is for a direction to MHADA to consider the case of the Appellant in accordance with law. The documents which have been relied upon in the trial Court would at least *prima facie* indicate that the Board had issued a communication in Form-B to the Appellant informing her that the building in which her room was situate was under repairs and that the Appellant would have to vacate. *Prima facie*, it cannot be said that the Appellant has no right whatsoever. Once the premises in the occupation of the Appellant have been repaired, intimation should have been furnished to the Appellant to take possession thereof.

5. In these circumstances, this Appeal can be disposed of by directing the Competent Authority in MHADA to consider the case of the

Appellant and to pass appropriate orders in accordance with law in a manner consistent with its policy decisions within a period of four months from today. In the meantime, until the case of the Appellant is considered and a final decision is arrived at , the Appellant shall not be called upon to vacate the transit accommodation. In the event that a decision adverse to the Appellant is taken, it will be open to the Appellant to move the City Civil Court for further directions and/or relief and the Trial Court shall decided the same uninfluenced by the observations contained in the impugned order.

6. The Appeal is accordingly disposed of in the above terms.

7. In view of the disposal of the Appeal, Civil Application does not survive and is accordingly disposed of.